

ASSEMBLY BILL

No. 1048

Introduced by Assembly Member Pavley

February 22, 2005

An act to amend Sections 15242 and 34501.12 of the Vehicle Code, relating to motor carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1048, as introduced, Pavley. Motor carriers.

(1) Existing law imposes various requirements upon owner-operators providing transportation services to a motor carrier under the direction and control of that motor carrier, as specified. Existing law makes a motor carrier that engages an owner-operator responsible for the compliance of that owner-operator with certain laws and regulations relating to commercial motor vehicle safety, if the owner-operator meets certain requirements.

This bill, instead, would make a motor carrier that engages a person who owns, leases, or otherwise operates not more than one commercial motor vehicle to provide transportation services under the direction and control of the motor carrier, responsible for the compliance of that person with the specified laws and regulations. The bill would revise the definition of "direction and control" for these purposes.

(2) Existing law, the Biennial Inspection of Terminals Program, imposes various inspection requirements upon certain motor carriers and defines the term "motor carrier" for purposes of that program, but excludes, from that definition, a registered owner who leases the vehicle to another person for a term of more than 4 months; but, provides that if the lease is for more than 4 months, the lessee is the

motor carrier. A violation of this program is a crime pursuant to other provisions of law.

This bill would also include a lessee as a motor carrier for purposes of that program if the lease is renewed, renegotiated, extended, or in any other way continued for more than 4 months. The bill would impose a state-mandated local program by revising the definition of a crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15242 of the Vehicle Code is amended
2 to read:
3 15242. (a) A person who is self-employed as a commercial
4 motor vehicle driver shall comply with both the requirements of
5 this chapter pertaining to employers and those pertaining to
6 employees.
7 (b) Notwithstanding subdivision (a), ~~any a motor carrier that~~
8 ~~engages an owner-operator meeting the requirements of~~
9 ~~subdivision (b) of Section 34624~~ *a person who owns, leases, or*
10 *otherwise operates not more than one motor vehicle listed in*
11 *Section 34500 to provide transportation services under the*
12 *direction and control of that motor carrier is responsible for the*
13 *compliance of that* ~~owner-operator~~ *person* *with this chapter and*
14 *for purposes of the regulations adopted by the department*
15 *pursuant to Section 34501 during the period of that direction and*
16 *control.*
17 (c) For the purposes of subdivision (b), “direction and control”
18 means either of the following:
19 (1) ~~The owner-operator person is operating under the~~ *either of*
20 *the following:*

1 (A) *The motor carrier's interstate operating authority issued*
2 *by the United States Department of Transportation—interstate*
3 *operating authority of the motor carrier.*

4 (B) *A subcontract with the motor carrier that requires the*
5 *person to operate in interstate or intrastate commerce.*

6 (2) ~~The owner-operator~~ *person* has performed transportation
7 services for a minimum of 60 calendar days within the past 90
8 calendar days for the motor carrier and has been on duty for that
9 carrier for no less than 36 hours within any week in which
10 transportation services were provided.

11 (d) Subdivision (b) shall not be construed to change the
12 definition of “employer,” “employee,” or “independent
13 contractor” for any purpose.

14 SEC. 2. Section 34501.12 of the Vehicle Code, as amended
15 by Section 5 of Chapter 518 of the Statutes of 2004, is amended
16 to read:

17 34501.12. (a) Notwithstanding Section 408, as used in this
18 section and Sections 34505.5 and 34505.6, “motor carrier” means
19 the registered owner of any vehicle described in subdivision (a),
20 (b), (e), (f), or (g) of Section 34500, except in *either of the*
21 *following circumstances:*

22 (1) The registered owner leases the vehicle to another person
23 for a term of more than four months. If the lease is for more than
24 four months, *or is renewed, renegotiated, extended, or in any*
25 *other way continued for more than four months*, the lessee is the
26 motor carrier.

27 (2) The registered owner operates the vehicle exclusively
28 under the authority and direction of another person. If the
29 operation is exclusively under the authority and direction of
30 another person, that other person may assume the responsibilities
31 as the motor carrier. If not so assumed, the registered owner is
32 the motor carrier. A person who assumes the motor carrier
33 responsibilities of another pursuant to subdivision (b) shall
34 provide to that other person whose motor carrier responsibility is
35 so assumed, a completed copy of a departmental form
36 documenting that assumption, stating the period for which
37 responsibility is assumed, and signed by an agent of the assuming
38 person. A legible copy shall be carried in each vehicle or
39 combination of vehicles operated on the highway during the
40 period for which responsibility is assumed. That copy shall be

1 presented upon request by any authorized employee of the
2 department. The original completed departmental form
3 documenting the assumption shall be provided to the department
4 within 30 days of the assumption. If the assumption of
5 responsibility is terminated, the person who had assumed
6 responsibility shall so notify the department in writing within 30
7 days of the termination.

8 (b) (1) A motor carrier may combine two or more terminals
9 that are not subject to an unsatisfactory compliance rating within
10 the last 36 months for purposes of the inspection required by
11 subdivision (d) subject to all of the following conditions:

12 (A) The carrier identifies to the department, in writing, each
13 terminal proposed to be included in the combination of terminals
14 for purposes of this subdivision prior to an inspection of the
15 designated terminal pursuant to subdivision (d).

16 (B) The carrier provides the department, prior to the inspection
17 of the designated terminal pursuant to subdivision (d), a written
18 listing of all its vehicles of a type subject to subdivision (a), (b),
19 (e), (f), or (g) of Section 34500 that are based at each of the
20 terminals combined for purposes of this subdivision. The listing
21 shall specify the number of vehicles of each type at each
22 terminal.

23 (C) The carrier provides to the department at the designated
24 terminal during the inspection all maintenance records and driver
25 records and a representative sample of vehicles based at each of
26 the terminals included within the combination of terminals.

27 (2) If the carrier fails to provide the maintenance records,
28 driver records, and representative sample of vehicles pursuant to
29 subparagraph (C) of paragraph (1), the department shall assign
30 the carrier an unsatisfactory terminal rating and require a
31 reinspection to be conducted pursuant to subdivision (h).

32 (3) For purposes of this subdivision, the following terms have
33 the meanings given:

34 (A) "Driver records" includes pull notice system records,
35 driver proficiency records, and driver timekeeping records.

36 (B) "Maintenance records" includes all required maintenance,
37 lubrication, and repair records and drivers' daily vehicle
38 condition reports.

(C) “Representative sample” means the following, applied separately to the carrier’s fleet of motortrucks and truck tractors and its fleet of trailers:

Fleet Size	Representative Sample
1 or 2	All
3 to 8	3
9 to 15	4
16 to 25	6
26 to 50	9
51 to 90	14
91 or more	20

(c) Each motor carrier who, in this state, directs the operation of, or maintains, any vehicle of a type described in subdivision (a) shall designate one or more terminals, as defined in Section 34515, in this state where vehicles can be inspected by the department pursuant to paragraph (4) of subdivision (a) of Section 34501 and where vehicle inspection and maintenance records and driver records will be made available for inspection.

(d) (1) The department shall inspect, at least every 25 months, every terminal, as defined in Section 34515, of any motor carrier who, at any time, operates any vehicle described in subdivision (a).

(2) The department shall place an inspection priority on those terminals operating vehicles listed in subdivision (g) of Section 34500.

(3) As used in this section and in Sections 34505.5 and 34505.6, subdivision (f) of Section 34500 includes only those combinations where the gross vehicle weight rating (GVWR) of the towing vehicle exceeds 10,000 pounds, but does not include a pickup truck, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous material for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which hazardous waste transporter registration is required pursuant to Section 25163 of the Health and Safety Code. Historical vehicles, as described in Section 5004, vehicles that display special identification plates in accordance with Section 5011,

1 implements of husbandry and farm vehicles, as defined in
2 Chapter 1 (commencing with Section 36000) of Division 16, and
3 vehicles owned or operated by an agency of the federal
4 government are not subject to this section or to Sections 34505.5
5 and 34505.6.

6 (e) (1) It is the responsibility of the motor carrier to schedule
7 with the department the inspection required by subdivision (d).
8 The motor carrier shall submit an application form supplied by
9 the department, accompanied by the required fee. The initial fee,
10 which is nonrefundable, for a carrier that initially enrolls into the
11 program, is six hundred fifty dollars (\$650) per terminal. The
12 initial fee is four hundred dollars (\$400) for a motor carrier that
13 owns, leases, or otherwise operates not more than one heavy
14 power unit and not more than three towed vehicles subject to this
15 section. The renewal fee, which is nonrefundable, is four hundred
16 dollars (\$400) per terminal, except in the case of a motor carrier
17 who owns, leases, or otherwise operates not more than one heavy
18 power unit and not more than three towed vehicles subject to this
19 section, for which the fee shall be one hundred dollars (\$100).
20 Federal, state, and local public entities are exempt from the fee
21 requirements of this section.

22 (2) Except as provided in paragraph (4), the inspection term
23 for each inspected terminal of a motor carrier shall expire 25
24 months from the date the terminal receives a satisfactory
25 compliance rating, as specified in subdivision (h). Applications
26 and fees for subsequent inspections shall be submitted not earlier
27 than nine months and not later than seven months before the
28 expiration of the motor carrier's then current inspection term. If
29 the motor carrier has submitted the inspection application and the
30 required accompanying fees, but the department is unable to
31 complete the inspection within the 25-month inspection period,
32 then no additional fee shall be required for the inspection
33 requested in the original application.

34 (3) All fees collected pursuant to this subdivision shall be
35 deposited in the Motor Vehicle Account in the State
36 Transportation Fund. An amount equal to the fees collected shall
37 be available for appropriation by the Legislature from the Motor
38 Vehicle Account to the department for the purpose of conducting
39 truck terminal inspections and for the additional roadside safety
40 inspections required by Section 34514.

(4) To avoid the scheduling of a renewal terminal inspection pursuant to this section during a carrier's seasonal peak business periods, the current inspection term of a terminal that has paid all required fees and has been rated satisfactory in its last inspection may be reduced by not more than nine months if a written request is submitted by the carrier to the department at least four months prior to the desired inspection month, or at the time of payment of renewal inspection fees in compliance with paragraph (2), whichever date is earlier. A motor carrier may request this adjustment of the inspection term during any inspection cycle. A request made pursuant to this paragraph shall not result in a fee proration and does not relieve the carrier from the requirements of paragraph (2).

(f) It is unlawful for a motor carrier to operate any vehicle subject to this section without having submitted an inspection application and the required fees to the department as required by subdivision (e) or (h).

(g) It is unlawful for any motor carrier to operate any vehicle subject to this section after submitting an inspection application to the department, without the inspection described in subdivision (d) having been performed and a safety compliance report having been issued to the motor carrier within the 25-month inspection period or within 60 days immediately preceding the inspection period.

(h) (1) Any inspected terminal that receives an unsatisfactory compliance rating shall be reinspected within 120 days after the issuance of the unsatisfactory compliance rating.

(2) A terminal's first required reinspection under this subdivision shall be without charge unless one or more of the following is established:

(A) The motor carrier's operation presented an imminent danger to public safety.

(B) The motor carrier was not in compliance with the requirement to enroll all drivers in the pull notice program pursuant to Section 1808.1.

(C) The motor carrier failed to provide all required records and vehicles for a consolidated inspection pursuant to subdivision (b).

(3) If the unsatisfactory rating was assigned for any of the reasons set forth in paragraph (2), the carrier shall submit the required fee as provided in paragraph (4).

(4) Applications for reinspection pursuant to paragraph (3) or for second and subsequent consecutive reinspections under this subdivision shall be accompanied by the fee specified in paragraph (1) of subdivision (e) and shall be filed within 60 days of issuance of the unsatisfactory compliance rating. The reinspection fee is nonrefundable.

(5) When a motor carrier's Motor Carrier of Property Permit or Public Utilities Commission operating authority is suspended as a result of an unsatisfactory compliance rating, the department shall conduct no reinspection until requested to do so by the Department of Motor Vehicles or the Public Utilities Commission, as appropriate.

(i) It is the intent of the Legislature that the department make its best efforts to inspect terminals within the resources provided. In the interest of the state, the Commissioner of the California Highway Patrol may extend for a period, not to exceed six months, the inspection terms beginning prior to July 1, 1990.

(j) To encourage motor carriers to attain continuous satisfactory compliance ratings, the department may establish and implement an incentive program consisting of the following:

(1) After the second consecutive satisfactory compliance rating assigned to a motor carrier terminal as a result of an inspection conducted pursuant to subdivision (d), and after each consecutive satisfactory compliance rating thereafter, an appropriate certificate, denoting the number of consecutive satisfactory ratings, shall be awarded to the terminal, unless the terminal has received an unsatisfactory compliance rating as a result of any inspection conducted in the interim between the consecutive inspections conducted under subdivision (d), or the motor carrier is rated unsatisfactory by the department following a controlled substances and alcohol testing program inspection. The certificate authorized under this paragraph shall not be awarded for performance in the administrative review authorized under paragraph (2). However, the certificate shall include a reference to any administrative reviews conducted during the period of consecutive satisfactory compliance ratings.

(2) Unless the department's evaluation of the motor carrier's safety record indicates a declining level of compliance, a terminal that has attained two consecutive satisfactory compliance ratings assigned following inspections conducted

1 pursuant to subdivision (d) is eligible for an administrative
2 review in lieu of the next required inspection, unless the terminal
3 has received an unsatisfactory compliance rating as a result of
4 any inspection conducted in the interim between the consecutive
5 inspections conducted under subdivision (d). An administrative
6 review shall consist of all of the following:

7 (A) A signed request by a terminal management representative
8 requesting the administrative review in lieu of the required
9 inspection containing a promise to continue to maintain a
10 satisfactory level of compliance for the next 25-month inspection
11 term.

12 (B) A review with a terminal management representative of
13 the carrier's record as contained in the department's files. If a
14 terminal has been authorized a second consecutive administrative
15 review, the review required under this subparagraph is optional,
16 and may be omitted at the carrier's request.

17 (C) Absent any cogent reasons to the contrary, upon
18 completion of the requirements of subparagraphs (A) and (B), the
19 safety compliance rating assigned during the last required
20 inspection shall be extended for 25 months.

21 (3) Not more than two administrative reviews may be
22 conducted consecutively. At the completion of the 25-month
23 inspection term following a second administrative review, a
24 terminal inspection shall be conducted pursuant to subdivision
25 (d). If this inspection results in a satisfactory compliance rating,
26 the terminal shall again be eligible for an administrative review
27 in lieu of the next required inspection. If the succession of
28 satisfactory ratings is interrupted by any rating of other than
29 satisfactory, irrespective of the reason for the inspection, the
30 terminal shall again attain two consecutive satisfactory ratings to
31 become eligible for an administrative review.

32 (4) As a condition for receiving the administrative reviews
33 authorized under this subdivision in lieu of inspections, and in
34 order to ensure that compliance levels remain satisfactory, the
35 motor carrier shall agree to accept random, unannounced
36 inspections by the department.

37 (k) This section shall be known and may be cited as the
38 Biennial Inspection of Terminals Program or BIT.

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the
4 penalty for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition of a
6 crime within the meaning of Section 6 of Article XIII B of the
7 California Constitution.

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